

Members

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Rep. Ralph Ayres
Rep. Ryan Dvorak
Rep. Robert Kuzman
Sen. Richard Bray, Vice-Chairperson
Sen. David Long
Sen. John Broden
Sen. Timothy Lanane
G. Michael Witte
Chief Justice Randall Shepard
Ron Tabaczynski
Jacqueline Rowan
Larry Bye



COMMISSION ON COURTS

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Authority: IC 33-1-15

MEETING MINUTES¹

Meeting Date: October 20, 2005
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Rep. Kathy Richardson, Chairperson; Rep. Ralph Ayres; Rep. Ryan Dvorak; Sen. Richard Bray, Vice-Chairperson; Sen. David Long; Sen. John Broden; Sen. Timothy Lanane; Judge John G. Baker representing Chief Justice Randall Shepard; Ron Tabaczynski; Jacqueline Rowan; Larry Bye.

Members Absent: Rep. Robert Kuzman; G. Michael Witte.

Representative Richardson called the meeting to order at 1:10 p.m.

As the first order of business, the Commission members reviewed and approved the minutes from the October 3rd meeting.

Old Business: Representative Richardson told the Commission members that she received a preliminary opinion from the office of the Attorney General concerning garnishee defendants. In the letter (see Exhibit A), the Deputy Attorney General who wrote this preliminary conclusion stated that:

A garnishment is generally treated as a proceeding ancillary to the original lawsuit. The garnishee functions essentially as a secondary defendant. Based on the garnishee defendant's role as a "defendant" outside of the original

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

action, the garnishee defendant is named as the holder of wages or funds for the defendant that are subject to claims of the defendant. Our preliminary research would indicate that the "garnishee defendant" is not a "judgment defendant" to the original action and therefore the fees assessed to such defendants would not apply to the garnishee.

Representative Richardson told the Commission members that she will work on this issue during the session to further clarify the distinction between judgment defendants and garnishee defendants in statute.

Representative Richardson proposed that the preliminary opinion of the office of the Attorney General be used to clarify IC 33-37-5-28 for collection of the civil account fee and that the garnishee defendant issue be brought before the General Assembly next year. The motion was accepted by the Commission members by a voice vote.

Reendorsement of SB 69–2005 Regarding Voter Registration: Judge Baker told the Commission that SB 69–2005 (see Exhibit B) was proposed to broaden the cross section of the community that could be used to select persons for jury service. By linking the different sources that could be used to select juries in statute with those in Supreme Court rule, jury selection can be expanded without constant supervision of the legislative branch. Judge Baker described the process that the Supreme Court uses to expand the sources of jury pools. A committee composed of trial judges studies proposed lists and recommends changes to the Supreme Court. Senator Long commented that being on a jury list has long been a disincentive to register to vote. By expanding the number of sources that can be used to get jury pools, individuals in each county may not be discouraged to register to vote. This proposal was approved for recommendation by the Commission members by voice vote

Hendricks County Courts and Elections Schedule: Representative Jeff Thompson told the Commission members that two new courts were created in Hendricks County by HEA 1141 in 2005. Because of this creation, four of the six courts would be open for election in 2006, two courts would be open for election in 2010, and again four courts would be open for election in 2012. Representative Thompson proposed that the initial terms of new courts be for four years. He acknowledged that the first-term judges would have a four-year term rather than six, consequently discouraging some attorneys from running for election. However, he indicated that making this change would allow for two courts to be open at each election cycle rather than two during one election and four at the next. This proposal was approved by Commission members by voice vote.

Workload Issues of Court of Appeals: Judge James Kirsch, chief judge of the Court of Appeals, told the Commission members about the expanding number of filings in the Court of Appeals (See Exhibit C).

During the ensuing discussion, Judge Kirsch indicated that criminal appeals and post conviction relief comprise roughly 60% of all cases on appeal. Cases involving termination of parental rights are a small percentage of all cases. Mediation can help to reduce the caseloads, but particularly at the trial court level. Judge Kirsch cited different factors that contribute to the growth in cases appealed. One of these occurs when new prosecuting attorneys are elected with potentially different philosophies involving plea bargains. Judge Kirsch also commented that while many criminal cases are not frivolous, there are a percentage of appeals that are brought by prisoners representing themselves with little substance. Judge Baker commented that since 1988, two amendments to the Indiana constitution have shifted more cases from the Indiana Supreme Court to the Court of Appeals. Judge Kirsch concluded by stating that he is not proposing new courts, but wanted to make the

Commission aware of the issues if the legislature wants to have high quality court decisions.²

Discussion of Excess Levies: Bob Harris of the Department of Local Government Finance described how petitions for excess levies can be appealed by counties adding new courts. IC 6-1.1-18.5-13 allows counties to appeal to increase the levy to offset the additional costs. The Local Government Tax Control Board hears appeals, votes to approve, deny, or modify, and sends the recommendation to the Commissioner of the Department of Local Government Finance. Items that can be included in the appeal are new staff, office furniture, and equipment. The staff also include estimated new revenues that would offset additional costs. Capital outlays can also be included if they are amortized.

When asked whether a county could receive a predetermination, Mr Harris indicated that the proposal needs to go to another Local Government Tax Control Board before going to the Commissioner of the Department of Local Government Finance. The Commission members voted to recommend language so that county fiscal bodies can be authorized to secure from a preliminary determination of approval of excess levies from the Department of Local Government Finance. The motion was approved by voice vote.

Examination and Approval of Final Report:

The Commission next reviewed a draft of the final report prepared by staff of the Legislative Services Agency. The members made the following findings and recommendations.

New court for Jackson County: Senator Bray noted that while some local officials in Jackson County disagree about the local ability to fund a new court, he would motion for a new court to be created. The proposal for a new court was approved by a voice vote.

New Courts and Magistrates for Marion County: The proposal for two courts and two magistrates to be created in 2006 and two courts and two magistrates be created in 2008 were approved by voice vote.

New Courts for Johnson County: The Commission examined a request for two new courts. The Commission made no recommendation.

Lake County Juvenile Court Magistrates: The Commission members examined a memo prepared for Representative Richardson that outlined some of the issues related to the appointing powers of juvenile court judges in counties with more than 50,000 population (See Exhibit D). The Commission concluded that the judge of the Lake Superior Court has the power to appoint a new juvenile court magistrate without a recommendation from the Commission on Courts.

Upgrade of the Madison County Courts: The Commission examined whether the county courts in Madison County should be upgraded to either superior courts or made part of a unified court that included the current circuit court. The Commission recommended by a voice vote that the county courts be upgraded to courts of general jurisdiction, but not to a circuit court.

Converting Certain City and Town Courts to Courts of Record: The Commission members postponed this issue for another interim due to its complexity.

² In 1988, the constitution was amended so that all criminal cases with sentences or more than ten years be appealed directly to the Supreme Court. In 2000, the constitution was again amended so that only appeals of death sentence would go directly to the Supreme Court.

Balance of Judicial Salaries Fee Paid in Marion County Small Claims Court: The Commission concluded that IC 37-34 is silent concerning where 25% of the judicial salaries fee that is collected in Marion County Small Claims Courts should be deposited. They recommended that 25% of the fee be deposited in the township general fund. This recommendation was approved by a voice vote.

The **final report** was approved by the Commission by voice vote.

The meeting was adjourned at 3:30 p.m.